THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: A16/2026

In the matter between:

SONWABILE TSHITSHI **Appellant**

And

THE STATE **Respondent**

Summary: Criminal Law - Rape – Appeal against conviction only – complainant a single witness – discrepancies between viva voce testimony and statement not material– DNA is not a mandatory requirement for a conviction. - guilt of appellant proven beyond a reasonable doubt - appellant's version not reasonable possible true - Appeal on conviction dismissed.

Coram: Le Grange J et Yake AJ

Heard: 15 May 2026

Delivered: 8 June 2026

JUDGMENT

YAKE AJ (LE GRANGE J) Concurring:

Introduction

[1] This matter concerns an appeal against conviction only. The appellant was convicted on a charge of rape by the Cape Town Regional Court.

[2] Aggrieved by the decision of the court *a quo,* the appellant, with the leave of that court, now appeals before this court. The appeal is founded on several grounds, which are set out in greater detail below. The respondent opposes the appeal, contending that the trial court correctly convicted the appellant. The grounds of appeal, may in summary be set out as follows:

a) The court a quo erred in its findings and conclusions in several material respects:

(i) In holding that the medical report confirmed that the complainant had been raped, notwithstanding that no DNA evidence was obtained from swabs taken within hours of the alleged incident.

(ii) In accepting the doctor's evidence regarding a bruise on the complainant's lower back, despite the failure to record the age and colour of the bruise in the J88.

(iii) In disregarding the complainant's own testimony that she sustained no injuries during the alleged rape.

(iv) In failing to give due weight to the fact that the J88 was favourable to the appellant, in that no injuries were found on gynaecological examination and no clinical evidence of blunt penetration of the genitals was recorded.

(v) In finding the complainant to be a credible witness despite material contradictions in her testimony and discrepancies between her evidence and that of the state witnesses Botha and Goya.

(vi) In neglecting to apply the cautionary rule to the complainant's evidence as that of a single witness.

(vii) In rejecting the appellant's version on the basis of alleged improbabilities, rather than on cogent grounds.

(viii) In concluding that the State had proved its case beyond reasonable doubt.

[3] It is trite that the State bears the onus of proving guilt of the appellant beyond reasonable doubt. The appellant is under no obligation to prove his innocence. The factual substratum underpinning the conviction may be succinctly summarised as follows.

Factual Background

[4] In order to prove guilt of the appellant beyond reasonable doubt, the State led the evidence of four witnesses. The complainant, who was a single witness to the incident, Warrant Officer Botha, the first person to whom the complainant reported the sexual assault, Doctor Lamprecht, who examined the complainant and testified as medical expert and Sergeant Goya, the investigating officer. The appellant testified in his own defence and called no additional witnesses. Several documentary exhibits, were admitted into evidence, including the statement of the complainant, statement of sergeant Goya, the statement of Warrant Officer Botha, the medical expert report (commonly referred to as the J88), the DNA analysis report, and the presentence report.

[5] The issues that require determination in this appeal, together with the background facts that underpin and fortify the reasoning leading to my conclusion, may be summarised as follows:

Complainant's Testimony

[6] The complainant testified that she knows the appellant for approximately a period of five to six months, during which period they were employed as security guards at the Delft Community Hall. On 1 January 2022, she reported for her night duty shift, scheduled to commence at 18h00. Upon her arrival, she found the appellant already present, seated outside. After exchanging pleasantries, she proceeded inside to commence her duties, which included recording entries in the security journal. Shortly before midnight, the appellant entered the building. The complainant informed him of her intention to take a nap, whereupon the appellant took the two-way radio and returned outside.

[7] After some time, the appellant returned and instructed the complainant not to sleep, suggesting instead that they consume alcohol. This was declined by the complainant, explaining that she wished to take her children somewhere the following morning. The appellant, however, opened his bag and took out a bottle of Gordon's gin and forced her to drink. When she refused, the appellant took out a knife and threatened to stab her. Confronted with this threat, the complainant ultimately relented and consumed the alcohol which the appellant continued to pour until the bottle was nearly finished.

[8] The appellant thereafter instructed the complainant to undress, and he likewise undressed himself. Despite the complainant's attempts to resist, the appellant overpowered her and proceeded to insert his penis into her vagina without her consent. The complainant was unable to recall whether the appellant ejaculated, but she confirmed that no condom was used. At that stage, she was uncertain of the whereabouts of the knife.

[9] During the course of the assault, the complainant repeatedly requested permission to go to the bathroom. After some time, the appellant stopped what he was doing and accompanied her to the bathroom. On their arrival, she asked the

appellant to leave, explaining that she was unable to relieve herself while he remained at the door. Indeed, the appellant left, and that is when she seized the opportunity to escape. Naked, she crawled out of the bathroom, but the appellant noticed her and gave chase. She managed to run out of the yard of the community hall through a hole in the fence, at which point the appellant stopped his pursuit.

[10] Once outside, the complainant encountered a homeless man, who requested his girlfriend to provide her with a skirt to wear. Thereafter, she proceeded to seek help in a nearby house, where she was advised to report the matter to the police. She duly went to the police station, and at the police station, she met Warrant Officer Botha. At the time of her arrival at the police station, she was still intoxicated. She informed Botha of the incident, whereupon Botha contacted the standby investigating officer, Sergeant Goya ("Goya"). Goya later arrived and took her to hospital, where she was examined by Dr Lamprecht. Following the medical examination, Goya took down her statement and thereafter accompanied the complainant to point out the crime scene. By the time her statement was taken by Goya, she was sober. She further testified that, subsequent to the incident, she became the subject of ridicule at her workplace.

[11] Under cross examination, she was confronted with the inconsistency between the statement that she made to Botha and later to Goya and her viva voce evidence. She denied ever informing Botha that the appellant's friend was present on the night in question and that he threatened her with an okapi knife. She maintained that only she and the appellant were present, and that it was the appellant who threatened her with a knife. She further denied having told Goya that the appellant wanted to rape her for the second time.

Doctor Lamprecht

[12] Doctor Lamprecht who at the time was stationed at Thuthuzela Care Centre at Victoria Hospital, confirmed that on 2 January 2022, at 12:44, he examined the complainant following the alleged rape and thereafter compiled the J88 which was handed in as exhibit B. At the time of the examination, the complainant was completely sober. She provided history that she had been raped by a colleague at work who forced her to consume alcohol, thereafter, threatened her with a knife and raped her without condom. She further reported that, subsequent to the incident, she had both wiped herself and urinated.

[13] On physical examination, Dr Lamprecht noted an abrasion on the complainant's knee and a bruise on her lower buttock. In his opinion, these injuries were consistent with the complainant's history given to him that she had been pushed down and had fallen while attempting to flee. On gynaecological examination, he found no clinical evidence of blunt genital penetration. However, he emphasised that the absence of such findings does not exclude the possibility of penetration.

[14] When question about the absence of clinical evidence of blunt genital penetration, Dr. Lamprecht explained that a number of factors may play a role in absence of observable injuries. These include whether force was applied during penetration, the angle at which such force was exerted, presence or absence of any lubrication, the complainant's movements, whether she resisted or fought back and her state of intoxication. According to Dr Lamprecht, each of these factors can reduce the likelihood of injuries being sustained or detected.

[15] Under cross-examination, Dr Lamprecht was questioned regarding the absence of DNA evidence, notwithstanding the complainant's assertion that no condom had been used. He explained that the fact that the complainant was examined shortly after the alleged rape does not necessarily mean that DNA would be detected. He asserts that time is not the only factor to be considered;

other intervening circumstances may play a role, such as the complainant having urinated and wiped herself, the possibility of azoospermia (where semen contains no spermatozoa), or other variables. He maintained that although spermatozoa can remain in the body for several days, a negative DNA result may nonetheless occur due to such intervening factors.

[16] Warrant Officer Botha confirmed that, while on duty, the complainant arrived at the police station and reported that she had been raped. During the interview, Botha observed that the complainant was under the influence of alcohol, as she could smell it on her and observed how she was walking. She noted that the complainant was crying uncontrollably and it took approximately an hour to calm her down. Thereafter, Botha contacted the standby investigating officer, Sergeant Goya. Owing to the complainant's intoxicated state, Botha opened a skeleton docket and recorded a statement on her behalf. According to Botha, the complainant reported that her colleague at work had forced her to consume alcohol, and that his friend, who was present, had threatened her with an okapi knife. After they drank, the friend left, and it was then that the appellant raped her without a condom. Following the rape, she went to the toilet naked, and when the appellant was searching for toilet paper, she seized the opportunity to escape. A homeless man provided her with clothing, after which she proceeded to the police station to report the matter.

[17] Sergeant Goya, the investigating officer confirmed that he was doing standby duties and was at home when he received a call regarding a rape case that had been opened. He proceeded to the police station where he met the complainant. Upon interviewing her, he realised that she was under the influence of alcohol, as her account was incoherent. He then decided to take her to a doctor where she was examined. The complainant also attended counselling session. Once this was completed, he interviewed her again. On this occasion, the complainant was sober, and he was able to take down her statement. Thereafter,

she took him to point out the crime scene and subsequently took her home. Under cross- examination, Goya indicated that the complainant had informed him that the appellant wanted to rape her for the second time. With that, the State closed its case.

[18] After the close of the State's case, the appellant applied for a discharge in terms of section 174 of the CPA. The court *a quo* dismissed the application, holding that the appellant had a case to answer. I find no fault on the ruling of the Regional Magistrate; in my view, she correctly exercised her discretion in refusing the discharge.

[19] The appellant testified in his defence and denied raping the complainant. He confirmed that they were working the same night shift but allege that the complainant was already intoxicated when she arrived at work. He further conceded that they consumed alcohol together and the complainant was in and out. At some stage, the complainant went out and while waiting for her, he passed out. When he woke up the following morning, the complainant was no longer present, although her clothes remained there. He stated that he collected her clothes and gave them to someone, after which he was arrested. He maintains that he had no knowledge of the alleged rape of the complainant. That concluded the defence case.

The findings of the trial court

[20] After considering the conspectus of the evidence, the court *a quo* acknowledged that the complainant was a single witness and accordingly exercised the necessary caution in terms of section 208 of the CPA. The court *a quo* also examined the discrepancies between the complainant's viva voce evidence and the statement she had given to Botha, and attributed these to several factors: the lapse of time between the incident and her testimony in court; the

complainant's intoxication and trauma at the time of reporting; the fact that Botha and the complainant communicated in English although the complainant's home language is Xhosa, which may have led to miscommunication; the circumstances that Goya who also speaks Xhosa, could not take the statement after Botha already took it. The court *a quo* ultimately found that these discrepancies were not material.

[21] The court *a quo* made credibility findings in respect of the complainant's evidence and held that she testified in a logical and chronological manner. She was found to be a credible witness and her version was accepted. The court *a quo* likewise accepted the evidence of Dr Lamprecht holding that he was able to substantiate his findings.

[22] To the contrary, the court *a quo* rejected the appellant's bare denial and found that, in light of the complainant's version and the totality of evidence, the appellant's version, was not reasonable possible true.

Applicable legal principles

[23] It is settled law that in a matter such as the present, this court's powers to interfere on appeal with the findings of fact of the trial court are limited in the absence of demonstrable and material misdirection. Where there is no misdirection on the facts, the presumption is that its findings are correct, and the appellate court will only interfere with them if it is convinced that they are wrong. This principle was restated in *S v Jochems* 1991 (1) SACR (A) at 211 E-G as follows:

> 'It is a time-honoured principle that once a trial court has made credibility findings, an appeal court should be deferential and slow to interfere therewith unless is convinced on a conspectus of the evidence that the trial court was clearly wrong. ***R v Dhlumayo and Another 1948 (2) SA 677 (A)*** at 706; *S v Kebana* [2010] 1 All SA 310 (SCA) para12. As the saying goes, he was steeped in the atmosphere of the trial. Absent any

positive finding that he was wrong, this court is not at liberty to interfere with his findings.'

[24] In *Minister of Safety and Security & others v Craig & others NNO* 2011 (1) SACR 469 (SCA) para 58, Navsa JA stated that although courts of appeal are slow to disturb findings of credibility, they generally have greater liberty to do so where a finding of fact does not essentially depend on the personal impression made by a witness' demeanour, but predominantly upon inferences and other facts and upon probabilities. In such a case, a court of appeal with the benefit of a full record may often be in a better position to draw inferences.

Submissions by the parties

[25] At the hearing of this appeal, Ms Adams, who appeared for the appellant, submitted that the court *a quo* failed to exercise the necessary caution in its evaluation of the evidence. Instead, the court dealt with the evidence in peace meal fashion and overlooked the material contradictions concerning the surrounding circumstances of rape. Counsel further contended that the court neglected to reconcile the complainant's failure to testify about any injuries in Dr Lamprecht's findings, as well as Goya's assertion that the complainant's face was swollen. It was argued that the complainant's description of the ordeal as 'gruesome' was not supported by the evidence, given the absence of any physical assault. Counsel also criticised the court *a quo*'s reliance on miscommunication between Botha and the complainant, submitting that such reliance constitutes misdirection. Ms Adams maintained that the complainant's state of sobriety materially undermined her credibility and should have been accorded greater weight in the court's assessment.

[26] Ms Adams contended that the complainant's evidence was beset with inconsistencies and material contradictions. In her submission, these deficiencies rendered the complainant's testimony unreliable and, consequently, the State

failed to discharge its onus of proving guilt beyond a reasonable doubt. Counsel therefore urged that the appeal against conviction ought to succeed and that the conviction be set aside.

[27] On the other hand, Ms Van der Merwe, counsel for the respondent, submitted in her papers that the court *a quo* correctly evaluated the evidence in its entirety, mindful of the onus resting upon the State. She argued that the court exercised the necessary caution as required by section 208 of the CPA and, on that basis, found the complainant's testimony to be satisfactory.

[28] Counsel contended that the court *a quo* made positive credibility findings in favour of the complainant, holding that her evidence was logical, chronological, and that she was a credible witness. It was submitted that the court duly considered the discrepancies between the complainant's viva voce testimony and the version she conveyed to Botha and correctly attributed those inconsistencies to her state of intoxication and the language barrier. The court further found that Dr Lamprecht's evidence, when read together with that of the complainant, demonstrated that the complainant was not fabricating her account. On this basis, counsel argued that the appeal against conviction ought to be dismissed.

Discussion

[29] Against this backdrop, I turn to evaluate the merits of the appeal. The central issue for determination is whether the State succeeded in proving the appellant's guilt beyond a reasonable doubt. In approaching this enquiry, it is necessary to consider the totality of the evidence, the credibility findings made by the court *a quo*, and the weight to be accorded to the discrepancies highlighted by the appellant. The proper test is not whether the complainant's evidence was

flawless, but whether, notwithstanding the imperfections, it remained sufficiently reliable and trustworthy to sustain a conviction.

[30] It is trite that the duty to prove an accused's guilt rests squarely upon the State, and the accused bears no obligation to assist the prosecution in discharging this onus (see *S v Mathebula* 1997 (1) SACR 10 (W)). In assessing whether the State has succeeded in proving its case against the accused beyond a reasonable doubt, the court is enjoined to consider the evidence in its totality. The proper approach is that the conclusion reached, whether to convict or acquit an accused, must account for all the evidence presented, and not merely isolated portions thereof (see *S v Van der Meyden* 1999 (1) SACR 447 (WLD) at 449h).

[31] It is common cause that the appellant and the complainant were known to each other, being colleagues in the same workplace. The complainant's evidence is that the appellant raped her. The appellant, on the other hand, denied the allegation and insisted that nothing occurred between them. The trial court, having carefully considered the evidence, rejected the appellant's version and concluded that the State had proved its case beyond a reasonable doubt. For the reasons that follow, I am satisfied that the findings of the trial court are correct and beyond reproach.

[32] It is important to stress that the complainant's evidence must not be assessed in isolation. It must be assessed in conjunction with the appellant's version and the testimony of the other state witnesses. The complainant's evidence was that the appellant forced her to consume alcohol and thereafter raped her. The appellant, while conceding that they drank together, denied that he forced her to do so. He further denied raping the complainant, contending instead that while they were drinking, the complainant left the room and, when she failed to return, he passed out.

[33] Much emphasis was placed by the appellant's counsel on alleged contradictions and discrepancies between the complainant's evidence and that of other state witnesses. It was argued that the complainant testified she sustained no injuries, whereas Dr Lamprecht recorded injuries to her knee and lower buttock, and Mr Goya testified that she presented with a swollen face. The Regional Magistrate, however, correctly accepted the medical evidence, which was consistent with the complainant's account of being pushed down before rape and of crawling in an attempt to escape. I share the view of the Regional Magistrate that, had these been old injuries, there would have been no reason to record them, or the doctor would have noted that they were healed.

[34] While it is true that the complainant did not herself testify about these injuries, it is significant that the doctor's findings were never put to her in cross-examination, depriving her of the opportunity to respond. Furthermore, the incident occurred in January 2022, whereas the complainant testified in September 2023. It is entirely reasonable to expect that, given her state at the time of the incident and the lapse of time, she may not have recalled every detail, particularly as the injuries were not of a serious nature. This omission cannot, however, be construed as evidence of untruthfulness on her part.

[35] Counsel for the appellant sought to minimise the gravity of the offence by submitting that the circumstances before and after the alleged rape do not support the complainant's account of a harrowing ordeal, given the absence of evidence of physical assault. This submission is misguided. The absence of visible physical assault does not render the offence less serious. Rape, by its very nature is very serious, constitutes a grave violation of bodily integrity and human dignity. It is humiliating, degrading and brutal invasion of the privacy of the victim. See *S v Chapman 1997 (2) SACR 3 (SCA) at 5*. The humiliation and indignity suffered by the complainant, an adult woman, compelled her to flee unclothed into the street. This underscores the severity of the ordeal and to suggest otherwise is untenable.

[36] Considerable emphasis was placed by the appellant's counsel on the alleged discrepancies between the viva voce evidence of the complainant and her statements to Botha and Goya. The Regional Magistrate correctly found that these discrepancies were not material. It is undisputed that the complainant was intoxicated, a fact corroborated by both Botha and Goya, who observed her in that state. In fact, the appellant himself conceded that the complainant was intoxicated. Botha testified that, while walking and conversing with the complainant, she detected the smell of alcohol. She further explained that she was unable to take down a statement from the complainant precisely because of her intoxication.

[37] It is notable that Botha communicated with the complainant in English, whereas Goya, who arrived later and spoke Xhosa, the complainant's home language, was also unable to take her statement due to her condition. This inconsistency is striking, it is difficult to reconcile how Botha could attempt to take a statement in English while Goya, a Xhosa speaker, could not, despite arriving after Botha. The medical evidence provides clarity. The doctor's report records that, by the time of examination, the complainant was sober. Importantly, the complainant did not inform the doctor of the presence of the appellant's friend, a detail which further undermines the appellant's version.

[38] During the application for leave to appeal, the absence of DNA evidence was raised as one of the grounds. Significantly, Ms Adams did not pursue this line of argument. Correctly so, for it is trite that the absence of a DNA report does not, in itself, negate sexual penetration. DNA is not a mandatory requirement for a conviction. Courts evaluate cases based on the totality of evidence. If credible witnesses place the appellant at the scene and his defence is rejected, the lack of DNA does not override those facts. See *Thwala v S [2018] ZACC 34 2019 (1) BCLR 156 (CC).* Dr Lamprecht provided a cogent explanation as to why DNA material may not be present even where no condom was used. Among the factors

considered were that the complainant had urinated and wiped herself. This evidence was not challenged, nor was any contrary evidence presented to undermine the doctor's findings. In my view, the Regional Magistrate was entirely justified in accepting such evidence.

[39] I have also considered the further discrepancies raised by the appellant in his grounds of appeal. In my view, these contradictions are immaterial and do not strike at the core of what transpired between the appellant and the complainant. It is important to remind ourselves that contradictions, per se, do not lead to total the rejection of a witness' evidence.

[40] Furthermore, not every contradiction or error made by a witness unfavourably affects their overall credibility. (*S v Oosthuizen* 1982 (3) SA 571 (T)). In each case, the court must consider the nature of the contradictions, their number and importance and their bearing on the parts of the witness' evidence. In my view, these discrepancies are immaterial and do not discount the reliability and credibility of the complainant.

[41] It is my view that the complainant was a candid and truthful witness, and the record certainly lends credence to that conclusion. Her version was corroborated in material respects by all the State witnesses, and she remained adamant throughout her testimony that it was the appellant who raped her. Indeed, to some extent, certain aspects of her evidence even find partial corroboration in the appellant's own version.

[42] The complainant in this matter was a single witness. Section 208 of the CPA provides that an accused may be convicted of any offence on the single evidence of any competent witness. The requirement, however, is that such testimony must be clear and satisfactory in all material respects. At the same time, the cautionary rule applicable to single-witness evidence must not be allowed to

displace the exercise of common sense. (*S v Artman and Another 1968 (3) SA 339 (A).*

[43] As a single witness, the complainant's evidence had to either be: (a) substantially satisfactory in every material respect, or (b) corroborated. (*Phogole v The State (370/2023)* [2024] ZASCA 54 (9 May 2025)) para 77. Her evidence had to be approached with caution. In S v Webber 1971 (3) SA 754 (A) at 758F-H, the court held:

'A conviction is possible on the evidence of a single witness. Such witness must be credible, and the evidence should be approached with caution. Due consideration should be given to factors which affirm, and factors which detract from the creditability of the witnesses. The probative value of the evidence of a single witness should also not be equated with that of several witnesses.'

[44] Our court have consistently emphasised that there is no rigid formula by which the credibility of every single witness may be determined, but it is essential to approach the evidence of a single witness with caution and to weigh up by balancing the evidence of a witness against all the factors which may diminish the credibility of the witness. (see *S v Sauls* 1981 (3) SA 172 (A) at 180E-H). Having carefully considered the record, I am satisfied that the complainant's evidence meets the standard required under section 208 of the Criminal Procedure Act and passes the cautionary rule.

[45] By contrast, the appellant's version cannot withstand scrutiny. He advanced a bare denial, suggesting that the complainant falsely implicated him without any apparent motive. He would have this Court believe that the complainant ran into the street naked, leaving her clothing behind, merely to fabricate a case against him. Yet, in the same breath, the appellant, who was alone with the complainant, claims to have discovered her clothing beside him only the following morning when he awoke, professing ignorance as to how it came to be there. This explanation is implausible. In fact, it indirectly corroborates the

complainant's evidence, for it confirms that she departed without her clothing, thereby lending support to her version of events.

[46] The appellant's version in this regard is both suspicious and deeply concerning. If, as he contends, nothing transpired between himself and the complainant, it defies logic to suggest that the complainant would voluntarily undress herself at her workplace and run into the street in the middle of the night, naked, thereby exposing herself to humiliation, merely to fabricate a case against him. I share the sentiments of the Regional Magistrate that the complainant had no conceivable reason to falsely implicate the appellant while leaving the true assailant roaming around free.

[47] Considering the evidence in its totality, it is clear that the appellant took advantage of a defenceless woman, fully aware that she was alone and that no one would come to her aid. The appellant is fortunate that the State did not invoke the provisions of section 51(1) of the Criminal Law Amendment Act, for his conduct in intoxicating the complainant points strongly to premeditation. In my view, the appellant's version is far from being reasonable possible true, devoid of common sense, and was correctly rejected by the court *a quo*.

[48] Consequently, I am satisfied that the court *a quo's* finding, that the State proved the guilt of the appellant beyond a reasonable doubt was correct and ought not to be purged. I am further persuaded that the appellant's version is far-fetched and not reasonable possible true. The court *a quo* was therefore correct in rejecting it as false.

Conclusion

[49] I am satisfied that the guilt of the appellant was proven beyond a reasonable doubt. In the final analysis, and having regard to all the considerations discussed above, I am of the view that the appeal against conviction must fail.

Order

[50] In the result, I propose the following order.

a) The appeal against conviction be dismissed.

S. YAKE
ACTING JUDGE OF THE HIGH COURT

I agree and it is so ordered:

A. LE GRANGE
JUDGE OF THE HIGH COURT

Appearances

Counsel for the Appellant:	Ms L.N. Adams Legal Aid South Africa Cape Town Justice Centre
Counsel for the Respondent:	Ms Van Der Merwe Office of Director of Public Prosecutions Western Cape